

DRUG OFFENSIVE ACT 1987 No. 119

NEW SOUTH WALES



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DRUG OFFENSIVE ACT 1987 No. 119

NEW SOUTH WALES



Act No. 119, 1987

An Act to establish a New South Wales Drug Offensive Council and a Directorate of the Drug Offensive; to constitute a New South Wales Drug Offensive Foundation; to repeal the Drug and Alcohol Authority Act 1980; and for other purposes. [Assented to 16 June 1987]

See also Drug and Alcohol Rehabilitation Establishments Act 1987; Private Health Establishments (Amendment) Act 1987; Private Hospitals (Amendment) Act 1987.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Short title

1. This Act may be cited as the "Drug Offensive Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.
(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"Council" means the New South Wales Drug Offensive Council established under this Act;

"Director" means the Director of the Drug Offensive holding office as such under the Public Service Act 1979;

"Directorate" means the Directorate of the Drug Offensive established under this Act;

"drug or alcohol service" means any service or facility relating to—

- (a) the detection of drug or alcohol related problems;
- (b) the diagnosis of drug or alcohol related problems;
- (c) the treatment or rehabilitation of persons suffering from drug or alcohol related problems; or
- (d) the prevention or alleviation of drug or alcohol related problems, whether the service or facility is provided by any government department, public authority or other organisation or person;

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“Foundation” means the New South Wales Drug Offensive Foundation constituted by this Act;

“government department” includes an administrative office;

“organisation” means a government department, a public authority or any other body or organisation (whether of the same or different kind or nature);

“regulations” means regulations made under this Act;

“treatment” includes therapeutic counselling and also includes any other activity or procedure declared by the regulations to be treatment for the purposes of this Act.

(2) In this Act—

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Drug or alcohol related problems

4. A reference in this Act to a drug or alcohol related problem includes a reference to any personal, social, health or economic problem arising from or related to—

(a) the use of a drug or alcohol;

(b) the inhalation of any other substance; or

(c) any other activity that involves physiological dependence and is behaviourally detrimental and that is of a prescribed kind.

PART 2**THE NEW SOUTH WALES DRUG OFFENSIVE COUNCIL****The Council**

5. (1) There is established by this Act a council under the name of the “New South Wales Drug Offensive Council”.

(2) The Council—

- (a) shall have and may exercise the functions conferred or imposed on it by or under this or any other Act; and
- (b) shall, in the exercise of its functions, be subject to the control and direction of the Minister.

(3) The Council shall consist of 12 part-time members appointed by the Minister.

(4) Schedule 2 has effect with respect to the members of the Council.

(5) Schedule 3 has effect with respect to the procedure of the Council.

Functions of the Council

6. (1) The principal function of the Council is to provide advice to the Minister on the following matters:

- (a) the implementation of government policy relating to the provision of drug or alcohol services in New South Wales;
- (b) the role of non-government organisations (including their relationship with the government sector) in the provision of drug or alcohol services in New South Wales;
- (c) priorities in the provision of drug or alcohol services by the non-government sector;
- (d) possible initiatives for promoting and facilitating the provision of comprehensive, balanced and co-ordinated drug or alcohol services throughout New South Wales;
- (e) such other matters as may be referred to it by the Minister.

(2) The Council, in the exercise of its functions, shall consult and liaise with the Director.

Committees

7. (1) The Council may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Council.

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(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall be as determined by the Council or (subject to any determination of the Council) by the committee.

PART 3

THE DIRECTORATE OF THE DRUG OFFENSIVE

The Directorate

8. (1) There is established by this Act a division within the Department of Health under the name of the "Directorate of the Drug Offensive".

(2) The Director is the head of the Directorate and is responsible for the affairs of the Directorate so far as they relate to the Director's functions under this or any other Act.

(3) In the exercise of any such functions, the Director shall be assisted by other members of the staff of the Directorate in such manner as the Director considers appropriate.

(4) The Director is subject to the control and direction of the Minister and is (in relation to any such functions) responsible directly to the Minister.

Functions of the Director

9. (1) The Director shall have and may exercise the functions conferred or imposed on the Director by or under this Act, the Drug and Alcohol Rehabilitation Establishments Act 1987 or any other Act.

(2) The Director may—

- (a) review and make recommendations to the Minister on the policies and programmes, concerning the provision of drug or alcohol services, within the Department of Health and other organisations;
- (b) in consultation with the Secretary of the Department of Health, co-ordinate, monitor and evaluate drug or alcohol services provided throughout New South Wales by the Department of Health;
- (c) co-ordinate, monitor and evaluate, and provide an overview of, drug or alcohol services provided throughout New South Wales by prescribed organisations;

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- (d) undertake, promote and facilitate research (including collection of data) into the nature, extent, detection, diagnosis, prevention or alleviation of drug or alcohol related problems and the treatment or rehabilitation of persons suffering from drug or alcohol related problems;
- (e) promote and facilitate the development and implementation of educational or training programmes relating to drug or alcohol related problems;
- (f) review and make recommendations on grants to organisations or persons for the purpose of assisting or enabling the provision of drug or alcohol services throughout New South Wales;
- (g) co-ordinate the financial arrangements concerning Commonwealth grants for drug or alcohol services or relating to drug or alcohol related problems, subject to the terms and conditions of any such grant;
- (h) provide administrative and research support for the Council and any other organisations in relation to drug or alcohol services or drug or alcohol related problems; and
- (i) formulate standards for rehabilitation and treatment centres and policies for their implementation.

(3) The Director's functions under this or any other Act may be exercised in association with other organisations, in New South Wales or elsewhere, having similar or complementary functions.

(4) The Director's co-ordinating functions (except in relation to subsection (2) (g)) are of a recommendatory nature only.

Consultation by and with Directorate

10. (1) To the extent that the functions of the Director are the same as or similar to the functions of a government department or public authority, the Directorate shall, in the exercise of those functions, consult with the department or authority to the maximum practicable extent.

(2) To the extent that the functions of a government department or public authority involve the provision of drug or alcohol services, the department or authority shall consult with the Director in the provision of those services.

(3) Nothing in this section requires members of the Police Force to consult with the Director in the exercise of their functions in relation to the detection of offenders.

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Annual report

11. (1) As soon as practicable after 30 June, but on or before 30 December, in each year, the Director shall prepare and forward to the Minister a report of the Directorate's work and activities for the 12 months ending on 30 June in that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(3) Nothing in this section prevents the report from being included in the annual report of the Department of Health for the relevant period.

PART 4**THE NEW SOUTH WALES DRUG OFFENSIVE FOUNDATION****The Foundation**

12. (1) There is constituted by this Act a corporation under the corporate name of the "New South Wales Drug Offensive Foundation".

(2) The affairs of the Foundation shall be managed by the Minister.

(3) Any act, matter or thing done in the name of, or on behalf of, the Foundation by the Minister, or with the authority of the Minister, shall be deemed to have been done by the Foundation.

Functions of the Foundation

13. (1) The Foundation shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

(2) The Foundation may, out of the Drug Offensive Foundation Fund, provide funds and make grants, and provide other support, for any purpose connected with—

(a) the provision of drug or alcohol services; or

(b) any of the functions of the Council or the Director.

(3) The Foundation may raise funds, or promote and facilitate the raising of funds, by means of public appeal or otherwise, for the purposes of subsection (2).

Power to accept gifts etc.

14. (1) The Foundation may acquire by gift, bequest or devise any property for any of the purposes of this Act and may agree to and carry out the conditions (if any) of the gift, bequest or devise.

(2) The rule of law against remoteness of vesting does not apply to any condition of a gift, bequest or devise to which the Foundation has agreed.

Provisions relating to Foundation

15. (1) The Foundation—

- (a) has perpetual succession;
- (b) shall have an official seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) may do and suffer all other things that a body corporate may, by law, do and suffer and that are necessary for or incidental to the purposes for which the Foundation is constituted; and
- (e) is, for the purpose of any Act, a statutory body representing the Crown.

(2) The regulations may make provision for or with respect to—

- (a) the custody and use of the seal of the Foundation; and
- (b) the keeping of records concerning the acts, decisions and proceedings of the Foundation.

(3) All courts and persons acting judicially—

- (a) shall take judicial notice of the seal of the Foundation that has been affixed to any instrument or document; and
- (b) shall, until the contrary is proved, presume that the seal was properly affixed.

Drug Offensive Foundation Fund

16. (1) There shall be established in the Special Deposits Account in the Treasury a Drug Offensive Foundation Fund.

(2) The Drug Offensive Foundation Fund shall consist of any money received by the Foundation—

- (a) from Parliament;

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- (b) pursuant to or in connection with any gift, bequest or devise;
- (c) from any activity mentioned in section 13 (3); or
- (d) from any other source.

Financial year of Foundation

17. The financial year of the Foundation shall be the year commencing 1 July.

Annual report

18. There shall be included in the annual report of the Department of Health a report of the work and activities of the Foundation for the period covered by the annual report.

PART 5**MISCELLANEOUS****Regulations**

19. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

Repeals

20. The Acts specified in Schedule 1 are, to the extent indicated, repealed.

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Amendment of Acts No. 4, 1976 and No. 152, 1983

21. (1) The Statutory and Other Offices Remuneration Act 1975 is amended by omitting from Part 1 of Schedule 2 the words "Chairman of the Drug and Alcohol Authority of New South Wales."

(2) The Public Finance and Audit Act 1983 is amended by omitting from Schedule 2 the words "Drug and Alcohol Authority of New South Wales."

Savings, transitional and other provisions

22. Schedule 4 has effect.

SCHEDULE 1

(Sec. 20)

REPEALS

Drug and Alcohol Authority Act 1980 No. 82—the whole Act

Miscellaneous Acts (Retirement of Statutory Officers) Amendment Act 1980 No. 187—so much of Schedule 1 as amends Act No. 82, 1980

Miscellaneous Acts (Health Administration) Amendment Act 1982 No. 138—so much of Schedule 1 as amends Act No. 82, 1980

Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983 No. 153—so much of Schedule 1 as relates to Act No. 82, 1980

SCHEDULE 2

(Sec. 5 (4))

PROVISIONS RELATING TO THE MEMBERS OF THE COUNCIL

Age of members

1. A person of or above the age of 70 years is not eligible to be appointed as a member or to act in the office of a member.

Chairperson of the Council

2. (1) Of the members, one shall, in and by the relevant instrument of appointment as a member, be appointed as Chairperson of the Council.

(2) The Minister may remove a member from the office of Chairperson.

*Drug Offensive 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE COUNCIL—*continued*

(3) A person who is a member and Chairperson shall be deemed to have vacated office as Chairperson if the person—

- (a) is removed from that office by the Minister under this clause;
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

(4) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

Acting members and acting Chairperson

3. (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member.

(2) The Minister may, from time to time, appoint a member to act in the office of Chairperson during the illness or absence of the Chairperson, and the member, while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Minister may remove any person from any office to which the person was appointed under this clause.

(4) A person while so acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause, a vacancy in the office of a member or the Chairperson shall be deemed to be an absence from office of the member or Chairperson, as the case may be.

Term of office

4. A member shall, subject to this Schedule, be appointed for such term, not exceeding 4 years, as is specified in the instrument of appointment of the member and shall, if otherwise qualified, be eligible to be re-appointed as a member.

Remuneration

5. A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Filling of vacancy in office of member

6. If the office of any member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

*Drug Offensive 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE COUNCIL—*continued***Casual vacancies**

7. (1) A member shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) resigns the office by instrument in writing addressed to the Minister;
- (g) reaches the age of 70 years; or
- (h) is removed from office by the Minister under subclause (2) or (3).

(2) The Minister may remove a member from office.

(3) Without affecting the generality of subclause (2), the Minister may remove from office a member who contravenes the provisions of clause 8.

Disclosure of pecuniary interests

8. (1) A member who has a direct or indirect pecuniary interest—

- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Council; or
- (b) in a thing being done or about to be done by the Council,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

(2) The Council shall cause particulars of any disclosure made under subclause (1) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Council from time to time.

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SCHEDULE 2—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE COUNCIL—*continued*

(3) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1), the member shall not, unless the Minister otherwise determines—

(a) be present during any deliberation of the Council, or take part in any decision of the Council, with respect to that matter; or

(b) exercise any functions under this Act with respect to that thing,

as the case requires.

(4) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Council or the exercise of any function under this Act.

Effect of certain other Acts

9. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision shall not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

(3) The office of a member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Liability of members etc.

10. No matter or thing done by the Council, any member or any person acting under the direction of the Council shall, if the matter or thing done was in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

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SCHEDULE 3

(Sec. 5 (5))

PROVISIONS RELATING TO THE PROCEDURE OF THE COUNCIL

General procedure

1. (1) The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Council.

(2) Without limiting the generality of subclause (1), the Chairperson shall convene a meeting of the Council at least 8 times in any period of 12 months and at such other times as the Minister may request.

Quorum

2. The quorum for a meeting of the Council is 7 members.

Presiding member

3. (1) The Chairperson or, in the absence of the Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Council.

(2) The person presiding at any meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present shall be the decision of the Council.

Minutes

5. (1) The Council shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

(2) The Council shall submit a copy of the minutes of a meeting of the Council to the Minister within 14 days after the date on which the meeting is held.

First meeting of Council

6. The Minister shall call the first meeting of the Council in such manner as the Minister thinks fit.

SCHEDULE 4

(Sec. 22)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Interpretation

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

*Drug Offensive 1987*SCHEDULE 4—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

“Authority” means the Drug and Alcohol Authority of New South Wales constituted under the repealed Act;

“repealed Act” means the Drug and Alcohol Authority Act 1980.

Abolition of Authority

2. On the appointed day, the Authority is abolished.

Members of Authority

3. (1) A person holding office as a member of the Authority immediately before the appointed day shall cease to hold office as such on that day.

(2) A member of the Authority who ceases to hold office as such by reason of the operation of this Act is not entitled to be paid any remuneration or compensation by reason of so ceasing to hold office.

(3) Clause 5 of Schedule 3 to the repealed Act applies to the person holding office as Chairman of the Authority immediately before the appointed day as if—

- (a) that Act had not been repealed; and
- (b) the person had ceased to be Chairman because of the expiration of the person’s term of office immediately before that day.

References to Authority

4. (1) On and from the appointed day, a reference in any other Act, or in any instrument made under any Act or in any other instrument of any kind to the Authority or a member, officer or employee of the Authority shall be read as a reference to the Director.

(2) Such a reference to the Authority, if made in relation to any matter referred to in section 20 of the repealed Act or clause 5 (2) of this Schedule, shall be read as a reference to the Foundation.

Assets of Authority

5. (1) On and from the appointed day, all real and personal property and all rights and interest therein and all management and control thereof that, immediately before that day, was vested in or belonged to the Authority shall vest in and belong to the Foundation.

(2) Any property that was held by the Authority immediately before the appointed day by way of gift, bequest or devise, whether pursuant to section 20 of the repealed Act or otherwise, and that becomes property of the Foundation by virtue of this clause shall be deemed to have been acquired by the Foundation under section 14 of this Act.

*Drug Offensive 1987*SCHEDULE 4—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(3) Any condition subject to which any such property was so held by the Authority shall be deemed to be a condition to which the Foundation has agreed.

Grants

6. Subject to any directions of the Minister—

- (a) any grants approved but not provided by the Authority before the appointed day shall be payable after that day in accordance with the approval of the Authority; and
- (b) any conditions determined by the Authority in relation to any grant provided or approved by the Authority before that day are not affected by the repeals made by this Act.

Continuity of Special Projects Fund

7. Any money standing to the credit of the Drug and Alcohol Authority Special Projects Fund immediately before the appointed day shall be money standing to the credit of the Drug Offensive Foundation Fund as established by this Act.

The Directorate

8. The Directorate shall be deemed to have been established as a branch under section 49 of the Constitution Act 1902 and nothing in this Act affects the powers conferred by that section in relation to the Directorate.

Regulations

9. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

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SCHEDULE 4—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule (clauses 2 and 3 excepted).